

**Testimony to the Colorado Legislature**  
**By Bandy X. Lee, M.D., M.Div.**

My name is Bandy Lee. I am a forensic psychiatrist and violence expert who taught at Yale School of Medicine and Yale Law School for seventeen years before changing affiliations to Columbia University to help cofound a violence prevention institute. I am also president of the World Mental Health Coalition and a member of the Harvard Program in Psychiatry and the Law. I have testified or served as expert consultant for several states including New York, Connecticut, Massachusetts, Alabama, and California, and for several countries including Ireland and France, on prison reform and violence prevention programming. In 2007, I helped author the UN Secretary-General's chapter on "Violence against Children" and have been leading a project group for the World Health Organization Violence Prevention Alliance. I am a recipient of the National Institute of Mental Health's National Research Service Award and author of the textbook, *Violence* (Lee, 2019), over 100 peer-reviewed articles and chapters, and over 300 opinion articles, mostly on violence prevention.

After two decades of serving as an expert witness in criminal and civil courts, I have only recently become aware of the situation in family courts. Nothing prepared me for what I was to find. Yale Law School's Robert Cover said: "Interpretations in law ... constitute justifications for violence" (Cover, 1986). Nowhere is this truer than in family courts, and nowhere is the application more arbitrary, unjust, and unnecessary.

Family court judges are granted flexibility and discretion with the law, initially with good intentions, but the lack of oversight and the power to conduct all proceedings in secrecy have—much like the prison system—led to disastrous results. That a world of brutality and violence flourishes not only in prisons behind concrete walls, but also in courts of law behind "court seals" and "gag orders," is disturbing beyond anything I have witnessed in my forensic practice, especially since innocent children are involved.

The statistics are stark. A vast majority of contested custody cases are actually domestic violence cases involving the most dangerous individuals. 75% of women who are killed by their abusers are murdered after they leave. Many fathers involved in contested custody cases kill their children, such that almost 20% of the nation's child murders by parent have been the result of placement by the family courts (Center for Judicial Excellence, 2022). This can only be an undercount, as routine record concealment makes it virtually impossible to track the true number of child murders family courts enable. Child suicides are likely multifold higher, not to mention the enormous injury, pain, and suffering that usurp each life far before it reaches death.

Yet, more than 58,000 children a year are ordered into unsupervised custody by their physical or sexual abuser following divorce in the United States (Silberg, 2008). Meanwhile, in a disproportionate number of cases, the "protective parent"—usually the primary attachment figure for the children—loses custody. These children are maximally exposed to lifelong psychological and physical problems as well as decades of lost life, according to the federally-funded, nationwide Adverse Childhood Experience (ACE) studies, led by Dr. Vincent Felitti (2002).

Child abuse is a public health emergency in the United States, with major impacts on present levels of heart disease, cancer, obesity, high blood pressure, mental illness, substance abuse, crimes, suicides, and life expectancy (Petrucelli et al., 2019). Just one year of confirmed child maltreatment (such as physical abuse, sexual abuse, psychological abuse and neglect) amounts to total lifetime estimated financial costs of approximately \$124 billion (Fang et al., 2012). The human and social costs are astronomical.

Why is this happening? Family courts are generally ill-equipped to deal with the dangerous personality disorders that successfully evade prosecution even in criminal courts. They easily fall into the games perpetrators play, while misunderstanding how traumatized individuals respond. The U.S. Department of Justice commissioned a major study by Dr. Daniel Saunders of the University of Michigan, which found that “domestic violence is frequently undetected in custody cases or ignored as a significant factor in determinations of custody and visitation” (Saunders et al., 2011). Indeed, when Dr. Dianne Bartlow (2017) conducted a detailed study of 175 child murders by fathers in relation to contested custody, the courts had in many cases given the access they needed to murder their children. Furthermore, biases against women, children, and allegations of abuse endemic in family courts help dangerous individuals, especially men, to weaponize the courts as extensions of their abuse. A typical family court, especially where there is contested child custody, quickly turns into a surreal, upside-down world where abuse does not exist, violence is good, and protection of children is “mental illness.”

Popular yet unscientific theories such as “parental alienation” that thrive in family courts but nowhere else are designed to defeat mothers and children reporting abuse. This hypothesis, originally based not on research but on the personal biases of Richard Gardner, has been debunked scientifically and denounced by reputable professional associations, and yet continues to dominate as a tactic abusers use to manipulate the courts. The claim is that child sexual, physical, and psychological abuse is rare, made up, and “coached” by the primary caregiver (usually the mother) to “alienate” the other parent (usually the father).

According to an important study by Dr. Joan Meier (2020) of 240 electronically published court opinions, when courts believe a father’s claim of alienation, fathers win about 95% of the cases regardless of whether or not the mother claimed abuse. If there were domestic violence reports, they won 73% of cases; with child abuse allegations, 69%; and with child sexual abuse reports, 81%. Indeed, the study found that courts disbelieved 94% of the child sexual abuse reports. Yet, according an authoritative study by Dr. Nicholas Bala and colleagues (2001), mothers make deliberate false reports in custody disputes less than 2% of the time.

In addition, child abuse is not rare. One in four children in the United States will be sexually abused before they reach the age of eighteen. One in five children in the United States will be physically abused. All these children will experience some form of emotional abuse. In 2020, 1,750 children died of abuse and neglect in the United States. Studies have repeatedly established that not only is deliberate false child abuse reporting rare but that abuse is greatly underreported. This means that, in a majority of domestic violence custody cases, the courts are sending children to live with dangerous abusers, rapists, and would-be murderers.

Indeed, the situation became so acute, the 115th U.S. Congress adopted House Resolution 72, passed in September 2018, stating: “Expressing the sense of Congress that child safety is the first priority of custody and visitation adjudications, and that State courts should improve adjudications of custody where family violence is alleged....

“Whereas research confirms that allegations of domestic violence, child abuse, and child sexual abuse are often discounted when raised in child custody litigation; / Whereas research shows that abusive parents are often granted custody or unprotected parenting time by courts, placing children at ongoing risk.... / Whereas researchers have documented a minimum of 653 children murdered in the United States since 2008 by a parent involved in a divorce, separation, custody, visitation, or child support proceeding, often after access was provided by family courts over the objections of a protective parent; / Whereas scientifically unsound theories are frequently applied to reject parents’ and children’s reports of abuse,... / child safety is the first priority of custody and parenting adjudications, and courts should resolve safety risks and claims of family violence first, as a fundamental consideration, before assessing other best interest factors” (U.S. Congress, 2018).

Whether through ignorance or willful blindness, bad decisions have become the norm in family courts. A major National Institute of Justice-sponsored family court outcomes study came to the astonishing conclusion that if all family court custody decisions were reversed, they would be more correct (George Washington University, 2018). A cottage industry of lawyers and poorly-qualified “experts”, backed by abuser groups (which call themselves men’s rights or father’s rights groups) has developed because in domestic violence cases, the abusers usually control the money, and it is more lucrative to help the abusers. The most dangerous abusers use children as pawns to torment protective parents or to gain child support, seize marital assets, and even institutionalize protective parents, with shockingly high rates of success. The greatest casualties are the children, who suffer immeasurably and not only lose the opportunity ever to reach their full potential but in large part become the next generation of angry murderers and rapists, not to mention destroyers of their own lives.

What is the solution? Leaving court reform to court officials has been unproductive, as the sheer magnitude of the problem is more likely to be met with defense and denial. There needs to be meaningful judicial oversight at nationwide scale. It may occur in the form of transparency, journalistic reporting, and survey documentation of litigant experience every time a litigant appears before a judge. Absolute immunity must not be allowed where there is corruption, criminality, and fraud, and judges and their court-appointed personnel must be held accountable when they cause the death of a child and/or child abuse with long-term consequences. A system of impunity, abuse of power, and self-imposed secrecy has proven not to work. According to Justice Louis Brandeis (1914): “Sunlight is said to be the best of disinfectants” for social and industrial diseases.

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